

FISH & WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: August 26, 2014

Agenda Item: Deep Creek Instream Flow Water Right Lease

Division: Fisheries

Action Needed: Endorsement to Proceed

Time Needed on Agenda for this Presentation: 10 minutes

Background

Deep Creek is an important spawning tributary for the Missouri River. During the summer and early fall, dewatering due to irrigation withdrawals reduces stream flow in Deep Creek, which negatively impacts the fishery. In 2013, flow in Deep Creek substantially improved when a major irrigator began withdrawing water from the Broadwater-Missouri Canal rather than Deep Creek. It may not be possible to sustain these flow improvements, however, without legally changing existing irrigation rights to instream flow. The City of Townsend, which has the second priority irrigation water rights on Deep Creek, desires to pursue the negotiation of a lease of these water rights to FWP. FWP has statutory authority to temporarily change leased water rights to instream flow.

Public Involvement Process & Results

The Townsend City Council approved moving forward with negotiations with FWP on July 15. The water right lease agreement would be subject to final F&W Commission approval, at which time the public would have an opportunity to comment. To change a portion of the water right to instream flow, FWP must make application to DNRC. This application would be a public process and potentially affected parties would have the opportunity comment on the change. In addition, DNRC would conduct an environmental review of the proposed change.

Alternatives and Analysis

One alternative would be for FWP not to acquire the water rights and change them to instream flow. Improvements to flow-related habitat in Deep Creek may be foregone. Another alternative would be for the City of Townsend to temporarily change its water right to instream flow without the involvement of FWP. This alternative would require the city to incur the legal and technical cost of pursuing the change to instream flow and to dedicate already limited staff resources to monitoring and managing the temporary change for the benefit of the public fishery. The city may chose other options, such as sale of the right to the highest bidder, instead of taking on the cost associated with pursuing the change to instream flow on its own.

Agency Recommendation & Rationale

FWP recommends that the F&W Commission direct FWP to negotiate a water-right lease agreement with the City of Townsend.

Proposed Motion

I move FWP negotiate a water-right lease agreement with the City of Townsend for irrigation water rights from Deep Creek, subject to final approval by the FW Commission.